



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 89 of 2021

Date of Decision: 12.10.2022

Shri Herman Rani

Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. Philemon Nongbri, Adv. with
Mr. W.S. Gayang, Adv.

For the Respondent(s) : Mr. K.P. Bhattacharjee, GA (For R 1-6)
Mr. K.C. Gautam, Adv. (For R 7-10)

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT AND ORDER

1. This writ petition is directed against the letter No. PHE. 214/96/320, dated 12.02.2021, whereby it has been indicated that the petitioner's case does not fulfil the conditions required under the Meghalaya PHE Rules, 1996, for promotion to the post of Assistant



Engineer/SDO (Electrical) as he does not possess a '3 year Diploma' from any recognized Government Institution.

2. The petitioner's case is that he possesses a 3-year course qualification in Electro Mechanics (Wireman) from Don Bosco Technical School, Shillong, and on 05.11.1987, was temporarily appointed as Electrician and posted at the office of the Executive Engineer (PHE) Mawphlang, which continued for 16 years. On 10.06.2004, the Meghalaya Public Service Commission (MPSC) issued an advertisement for filling up of 10 posts of Junior Engineer Grade-I (Electrical) under the PHE Department and the petitioner accordingly applied, and in the selection process, was placed at Sl. No. 1 in the merit list. Thereafter, as per the Gradation list of Junior Engineers Grade-I (Electrical) dated 10.04.2012, the petitioner stood at Sl. No. 2 and one Shri Augustine Nengnong, who it is stated had similar qualifications to the petitioner was placed at Sl. No. 1. Subsequently the said Augustine Nengnong, was promoted to the post of Assistant Engineer/SDO (Electrical) as per the PHE Rules, in 2013. The petitioner it appears due to an active move by other Junior Engineers for a change in the existing seniority list, wherein the petitioner stood at No. 2, filed several representations for retention of the said seniority list which was sought to be altered. In the said representation, reliance



was also placed on a judgment dated 04.03.2010 passed in WP(C) No. 393 (SH) of 2005, wherein the party aggrieved, who possessed similar qualifications, after being denied promotion to the post of Assistant Engineer/SDO (Electrical) was subsequently granted promotion. Thereafter, it appears a provisional Gradation list was published on 25.06.2020, wherein the writ petitioner was shown at Sl. No. 1, but this was however followed by a letter dated 29.06.2020 issued by the respondent No. 6, that qualifications of the Junior Engineers be shown as '3 years Diploma in Electrical Engineering' instead of only 'Diploma in Electrical Engineering' and of the petitioner to be shown as '2 years ITI Certificate Holder'.

3. Being aggrieved thereby, the petitioner is before this Court that it is not permissible under law for a person falling in the same group to be classified differently for the purpose of promotion, and that there is no basis to consider a 3-year Diploma a higher qualification than a 2-year Diploma course.

4. Mr. Philemon Nongbri, learned counsel for the petitioner has strenuously argued that the impugned letter has caused grave injustice to the petitioner, inasmuch as, it provides for unequal consideration for promotion to the next higher post, and that the action of the respondents amounts to favouritism, which is impermissible in



law. The learned counsel also submits that the Schedule to the Rules prescribing a '3 year Diploma course' as a criteria for promotion to the post of Assistant Engineer/SDO (Electrical) is unreasonable, inasmuch as, whether one has a '2 year Diploma' or '3 year Diploma', both groups are holding the same post of Junior Engineer Grade-I (Electrical). The learned counsel places heavy reliance on the judgment of the Gauhati High Court the erstwhile jurisdictional High Court in the case of ***Karsing Kurbah vs. Chief Secretary & Ors. [WP(C) No. 393 (SH) of 2005]***, wherein he submits the situation was similar to the case of the petitioner and that the Court by order dated 04.03.2010, had directed the State respondents to reconsider the claim of the writ petitioner therein for promotion. He submits that the said Karsing Kurbah, was then on reconsideration promoted. The learned counsel therefore prays that the same consideration be given to the petitioner in considering his case for promotion, keeping in view his seniority and that the distinction should not be drawn between a 2 year Diploma and 3 year Diploma certificate.

5. Mr. K.P. Bhattacharjee, learned GA on behalf of the State respondents at the outset, has submitted that the qualification is prescribed in the Rules and has referred to Rule 7 (5) (a) and to Schedule-II, which shows that a 3 year Diploma course is mandatory



for promotion to the post of Assistant Engineer/SDO (Electrical) which he submits, the petitioner does not possess. He further submits that the petitioner was awarded a Diploma certificate dated 12.05.1982, which clearly states that he had completed a 2-year Diploma course, and that there is no further mention about any further qualifications. With regard to the judgment placed by the petitioner, he submits that the said case stands on a different footing, as it concerns the interpretation of whether the certificate possessed by writ petitioner therein fell within the category of 'Diploma' as per an OM dated 24.07.1995. The directions given in the said order he contends, was only for reconsideration and that the petitioner cannot take advantage of the said order dated 04.03.2010. Further, he submits the earlier case, concerned only the Office Memorandum referred to in the said judgment, which no longer has any relevance, after the advent of the PHE Service Rules 1996. He lastly submits that the Gradation list dated 25.06.2020, is still provisional and yet to be finalized and that the same cannot be considered to be a final list. He therefore submits that the writ petition deserves no consideration.

6. Mr. K.C. Gautam, learned counsel on behalf of the private respondents has endorsed the submission made by the learned Government Advocate as far as the prescription of the Rules are



concerned, and also maintains that the cited judgment will have no application to the case of the petitioner, as the judgment is silent on the Rules. He further submits that the petitioner cannot claim negative equality and that appointments made by mistake, or in violation of Rules, does not confer any right on any other person to claim parity. In support of his contention, the learned counsel has placed the following judgments :-

- i) **(2006) 3 SCC State of Uttar Pradesh vs. Rajkumar Sharma & Ors.** (Para-15)
- ii) **(2012) 5 SCC 559 Arup Das & Ors. vs. State of Assam & Ors.** (Para-19)
- iii) **(2010) 2 SCC 422 Union of India & Anr. vs. Kartick Chandra Mondal & Anr.** (Para-25)
- iv) **(2010) 11 SCC 455 Fuljit Kaur vs. State of Punjab** (Para 11 &12)
- v) **(2013) 14 SCC 81, Basawaraj vs. Spl. Land Acquisition Officers & Ors.** (Para-8)
- vi) **(2012) 7 SCC 462 Purbanchal Cables & Conductors (P) Ltd., vs. Assam Electricity Board.** (Para 59)

7. On the point of binding precedents, the learned counsel has relied heavily upon the judgment of **Purbanchal Cables & Conductors (P) Ltd., vs. Assam Electricity Board** (supra), wherein he submits the judgment relied upon by the petitioner being per incuriam, is also hit by the principles of sub silentio, which are two exceptions to the law of



binding precedents. He finally submits that no case has been made out by the petitioner and the writ petition is liable to be dismissed.

8. I have heard learned counsel for the parties.

9. The short point for consideration on the arguments advanced and materials placed is only in respect of the eligibility of the petitioner, to be considered for promotion to the next higher post of Assistant Engineer/SDO (Electrical). The PHE Rules, 1996 clearly indicate in Schedule-II that 3 years Diploma in the respective branch, with 10 years continuous service as Junior Engineer, is a must. The Rules have been in place since 1996 and the said provision which the petitioner finds offensive, has not been challenged till now. As the position of the Rules is such, this Court at this juncture is not inclined to accept the contentions of the petitioner as to the validity of the Rules, inasmuch as, from the time he was selected as Junior Engineer, he was well aware of the existence of this provision.

10. The judgment placed by the petitioner i.e. ***Karsing Kurbah vs. Chief Secretary & Ors. [WP(C) No. 393 (SH) of 2005]*** though attractive in its ratio, however, will not come to the aid of the petitioner in view of the fact that, the petitioner in the cited case was in possession of a 3-year Diploma and only the nature of the certificate as to whether it could be considered to come within the meaning of a Diploma as laid



down by a certain OM dated 24.07.1995, was up for consideration. The Court then, had only directed for reconsideration and had not dwelt or discussed the PHE Rules, 1996 at all. As such, the judgment so cited, will have no relevance in the adjudication of the present case, nor can the petitioner claim negative equality.

11. Undoubtedly, by length of service, the petitioner as per the provisional gradation list is the senior most and, in this consideration, thereof, if the same was to be by seniority, he would be the first choice for promotion. However, by way of the impugned letter, the petitioner has been deemed to be ineligible for consideration on the basis of qualification. The Court is therefore to examine as to whether the classification as provided in the Rules is reasonable and permissible in law as to not offend Article 14 of the Constitution of India.

12. It is a settled proposition that the requisites for a reasonable and valid classification must be founded or based on substantial differences or distinctions. In the instant case, the basis for the distinction, is the qualifying criteria as prescribed by the PHE Rules, 1996, which the petitioner admittedly does not possess. The fundamental right of equal protection of the laws is not absolute but can be subject to reasonable classification. As such, no perceived injustice can be said to have been caused to the petitioner, more so,



compounded with the fact that the gradation list dated 25.06.2020, is still provisional and yet to be finalized and no promotion had been accorded to any of the other contenders, such as the private respondents. No interference is therefore called for at this stage by this Court.

13. However, before parting with the records, as the Rules also provide for relaxation of any Rule in dealing with a peculiar situation for the interest of justice, the official respondents in consideration of the seniority of the petitioner, shall be at liberty to reconsider the case of the petitioner.

14. For the foregoing reasons, this writ petition is accordingly disposed of, however with no order as to costs.



JUDGE

Meghalaya
12.10.2022
"V. Lyndem-PS"